

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION and
THE PEOPLE OF THE STATE OF NEW
YORK, by LETITIA JAMES, Attorney
General of the State of New York,

Plaintiffs,

v.

QUINCY BIOSCIENCE HOLDING
COMPANY, INC., a corporation;

QUINCY BIOSCIENCE, LLC, a limited
liability company;

PREVAGEN, INC., a corporation
d/b/a SUGAR RIVER SUPPLEMENTS;

QUINCY BIOSCIENCE
MANUFACTURING, LLC, a limited
liability company; and

MARK UNDERWOOD, individually and as
an officer of QUINCY BIOSCIENCE
HOLDING COMPANY, INC., QUINCY
BIOSCIENCE, LLC, and PREVAGEN,
INC.,

Defendants.

Case No. 1:17-cv-00124-LLS

**NOTICE OF PLAINTIFFS'
MOTION TO EXCLUDE
THE TESTIMONY OF
DRS. DAVID SCHWARTZ,
DAVID KATZ, LEE-JEN
WEI, MINDY KURZER,
RICHARD GOODMAN,
AND DAVID GORTLER**

Plaintiffs Federal Trade Commission and the People of the State of New York, by Letitia James, Attorney General of the State of New York, move this Court under Federal Rules of Evidence 402, 403, 702, and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) for an order excluding testimony, including reliance on, references to, or arguments based upon the testimony or expert reports, of:

- 1) Drs. David Schwartz, David Katz, and Lee-Jen Wei relating to U.S. Food and Drug Administration (“FDA”) law, regulations, and guidance concerning drugs and dietary

supplements; Federal Trade Commission law and guidance; actions taken by FDA with respect to the drug Aduhelm; actions taken by other dietary supplement marketers; and the appropriate legal standard that applies in this case;

- 2) Dr. Katz relating to a re-analysis of Defendants' Madison Memory Study using the seemingly unrelated regression econometric model;
- 3) Dr. Wei relating to the statistical analysis and results of the Madison Memory Study;
- 4) Dr. Mindy Kurzer relating to opinions regarding cognition and memory, and her alternative analysis of the Madison Memory Study;
- 5) Dr. Richard Goodman relating to mechanisms of action for various compounds and potential mechanisms of action for Prevagen;
- 6) Dr. David Gortler relating to mechanisms of action for various compounds, potential mechanisms of action for Prevagen, FDA requirements, calcium's role in memory and Alzheimer's disease, and the Madison Memory Study;
- 7) Drs. Kurzer, Schwartz, and Katz relating to potential mechanisms of action for Prevagen; and
- 8) Drs. Gortler, Kurzer, Schwartz, and Katz relating to the safety of Prevagen.

The motion is based on the ground that these purported experts' opinions and testimony are inadmissible because they are outside the scope of their expertise, irrelevant to the matters at issue in this litigation, or constitute legal opinions, or their probative value is outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time.

Date: September 1, 2022

FEDERAL TRADE COMMISSION

/s/ Annette Soberats
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FEDERAL TRADE COMMISSION

Respectfully Submitted,

PEOPLE OF THE STATE OF NEW YORK
BY LETITIA JAMES
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CERTIFICATE OF SERVICE

I certify that on this 1st day of September 2022, I caused service of the foregoing Notice of Plaintiffs' Motion to Exclude the Testimony of Drs. David Schwartz, David Katz, Lee-Jen Wei, Mindy Kurzer, Richard Goodman, and David Gortler to be made by electronic filing with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

Dated: September 1, 2022

/s/ Annette Soberats

Annette Soberats
Federal Trade Commission